**To:** Arfeh, Ebab (admin@thetrademarkcompany.com)

**Subject:** U.S. TRADEMARK APPLICATION NO. 85574542 - THE CRAFTS

OUTLET - N/A

**Sent:** 5/13/2014 11:09:48 PM

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Attachment - 3
Attachment - 4
Attachment - 5
Attachment - 6
Attachment - 7
Attachment - 8

Attachment - 9

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION SERIAL NO. 85574542

MARK: THE CRAFTS OUTLET

\*85574542\*

**CORRESPONDENT ADDRESS:** 

MATTHEW H SWYERS THE TRADEMARK COMPANY 344 MAPLE AVENUE WEST SUITE 151

VIENNA, VA 22180

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APPLICANT: Arfeh, Ebab

**CORRESPONDENT'S REFERENCE/DOCKET NO:** 

N/A

**CORRESPONDENT E-MAIL ADDRESS:** 

admin@thetrademarkcompany.com

#### **OFFICE ACTION**

#### STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

**ISSUE/MAILING DATE: 5/13/2014** 

#### THIS IS A FINAL ACTION.

# TEAS PLUS APPLICANTS – TO MAINTAIN REDUCED FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE:

Applicants who filed their application online using the lower-fee TEAS Plus application form must (1) continue to submit certain documents online using TEAS, including responses to Office actions (see TMEP §819.02(b) for a complete list of these documents); (2) accept correspondence from the USPTO via e-mail throughout the examination process; and (3) maintain a valid e-mail address. *See* 37 C.F.R. §2.23(a)(1), (a)(2); TMEP §§819, 819.02(a). TEAS Plus applicants who do not meet these three requirements must submit an additional fee of \$50 per international class of goods and/or services. 37 C.F.R. §2.6(a)(1)(iv); TMEP §819.04. However, in certain situations, authorizing an examiner's amendment by telephone will not incur this additional fee.

This letter is in response to the applicant's communication filed on April 8, 2014.

The following refusal is repeated and made final: applied-for mark is generic

#### REFUSAL – APPLIED-FOR MARK IS GENERIC FINAL ACTION

Registration was initially refused under Trademark Act Section 2(e)(1) because the applied-for mark is merely descriptive of applicant's services. 15 U.S.C. §1052(e)(1). Applicant was also advised that the mark appears to be generic as well. In response, applicant amended the application to add a claim of acquired distinctiveness under Section 2(f). 15 U.S.C. §1052(f).

In the Office action dated December 10, 2013, registration was refused under section 2(e)(1) of the Trademark Act because the applied-for mark is generic for the applicant's services.

In the applicant's response dated April 8, 2014, the applicant again proposed amendment of the application to add a Section 2(f) claim of acquired distinctiveness based on attached evidence. After due consideration of the applicant's evidence of acquired distinctiveness, the refusal to register the mark on the Principal Register pursuant to Section 2(e)(1) of the Trademark Act because the applied-for mark is generic for applicant's services is repeated and made **FINAL**.

Registration is refused because the applied-for mark is generic for applicant's services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); see TMEP §§1209.01(c) et seq., 1209.02(a)(ii). Thus, applicant's claim of acquired distinctiveness under Section 2(f) is insufficient to overcome the refusal because no amount of purported proof that a generic term has acquired secondary meaning can transform that term into a registrable trademark or service mark. See 15 U.S.C. §1052(f); In re Bongrain Int'l (Am.) Corp., 894 F.2d 1316, 1317 n.4, 13 USPQ2d 1727, 1728 n.4 (Fed. Cir. 1990); H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc., 782 F.2d 987, 989, 228 USPQ 528, 530 (Fed. Cir. 1986); TMEP §1212.02(i).

Determining whether a mark is generic requires a two-step inquiry:

- (1) What is the genus of goods and/or services at issue?
  - (2) Does the relevant public understand the designation primarily to refer to that genus of goods and/or services?

In re 1800Mattress.com IP, LLC, 586 F.3d 1359, 1363, 92 USPQ2d 1682, 1684 (Fed. Cir. 2009) (quoting H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc., 782 F.2d at 989-90, 228 USPQ at 530); TMEP §1209.01(c)(i).

Regarding the first part of the inquiry, the genus of the goods and/or services is often defined by an applicant's identification of goods and/or services. *See In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 (TTAB 2014) (citing *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 640, 19 USPQ2d 1551, 1552 (Fed. Cir. 1991)).

In the present case, the identification, and thus the genus, is "on-line retail store services featuring beads, jewelry, crafts, envelopes, invitations, and glitter".

Regarding the second part of the inquiry, the attached evidence from the examining attorney's search in a computerized database, definitions from Merriam-Webster's Online Dictionary, 11th Edition, LEXIS®, and the applicant's web page, both attached and incorporated by reference herein, shows that the wording "crafts outlet" in the applied-for mark means a retail store selling crafts and craft supplies and thus this wording is essentially the apt or common name for the genus of the services. Accordingly, the relevant public would understand this designation to refer primarily to that genus of services because of the common understanding of the relevant terms and routine usage of the terms in commerce in relation to retail outlet stores featuring crafts and craft supplies.

In the instant case, the word "craft" refers to "articles made by <u>craftspeople</u> <a store selling *crafts* > <a *crafts* fair>." Please see the definition from Merriam-Webster's Online Dictionary, 11th Edition incorporated by reference herein. The term "outlet" is defined as "an agency (as a store) through which a product is marketed <retail *outlets*>". Please see the definition from Merriam-Webster's Online Dictionary, 11th Edition incorporated by reference herein. In the instant case, the applicant provides online retail services featuring crafts, and goods for making crafts such as beads, jewelry glitter, envelopes and invitations. See the applicant's web page incorporated by reference herein. Indeed, the articles from the examining attorney's search in a computerized database and LEXIS®, attached and incorporated by reference herein, demonstrate the common public understanding and use of the terms "crafts outlets" in relation to retail stores featuring crafts and craft supplies.

Please note that a term that is generic for a type of goods has been held generic for the service of selling primarily those goods. See In re Tires, Tires, Tires, Inc., 94 USPQ2d 1153, (TTAB 2009) (holding TIRES TIRES TIRES generic for retail tire store services); In re A La Vieille Russie, Inc., 60 USPQ2d 1895 (TTAB 2001) (holding RUSSIANART generic for art dealership services in the field of Russian art); In re Log Cabin Homes Ltd., 52 USPQ2d 1206 (TTAB 1999) (holding LOG CABIN HOMES generic for architectural design of buildings and retail outlets featuring kits for constructing buildings, especially houses); In re Bonni Keller Collections Ltd., 6 USPQ2d 1224 (TTAB 1987) (holding LA LINGERIE generic for retail store services featuring clothing); In re Wickerware, Inc., 227 USPQ 970 (TTAB 1985)

(holding WICKERWARE generic for mail order and distributorship services featuring products made of wicker); *In re Half Price Books, Records, Magazines, Inc.*, 225 USPQ 219 (TTAB 1984) (holding HALF PRICE BOOKS RECORDS MAGAZINES generic for retail book and record store services); TMEP §1209.03(r).

Evidence of the public's understanding that a designation primarily refers to the genus of specific goods and/or services may be obtained from any competent source, such as dictionaries, trade journals, magazines, catalogs, newspapers, and other publications. *See In re* Merrill Lynch, *Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 1570, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987); In re Northland Aluminum Prods., Inc., 777 F.2d 1556, 1559, 227 USPQ 961, 963 (Fed. Cir. 1985). In addition, material obtained from third-party Internet websites is generally accepted as competent evidence. *See In re Country Music Ass'n*, 100 USPQ2d 1824, 1829 (TTAB 2011); TBMP §1208.03; TMEP §710.01(b). Further, research databases such as LEXIS/NEXIS® are also considered a source of competent evidence. *See In re Leatherman Tool Grp., Inc.*, 32 USPQ2d 1443, 1449 (TTAB 1994); *In re Analog Devices Inc.*, 6 USPQ2d 1808, 1810 (TTAB 1988); TMEP §1209.01(c)(i).

The examining attorney acknowledges the term "the" in the applied-for mark, however, adding the term "the" to a descriptive or generic term generally does not add any source-indicating significance or otherwise affect the term's descriptiveness or genericness. See In re The Place Inc., 76 USPQ2d 1467, 1468 (TTAB 2005) (holding THE GREATEST BAR merely descriptive of restaurant and bar services; "the definite article THE . . . add[s] no source-indicating significance to the mark as a whole"); Conde Nast Publ'ns Inc. v. Redbook Publ'g Co., 217 USPQ 356, 357, 360 (TTAB 1983) (holding THE MAGAZINE FOR YOUNG WOMEN a "common descriptive or 'generic' name of a class or type of magazine" and incapable of indicating source; "[t]he fact that the slogan also includes the article 'The' is insignificant. This word cannot serve as an indication of origin, even if applicant's magazine were the only magazine for young women."); In re The Computer Store, Inc., 211 USPQ 72, 74-75 (TTAB 1981) (holding THE COMPUTER STORE merely descriptive of, and the common descriptive name for, computer-related services); see also In re G. D. Searle & Co., 143 USPQ 220 (TTAB 1964), aff'd, 360 F.2d 1966, 149 USPQ 619 (C.C.P.A. 1966) (holding "THE PILL" a common descriptive name for pharmaceutical preparations in tablet form, and thus does not serve as an indicator of source or origin in applicant).

The trademark examining attorney has established by "clear evidence" that the applied-for mark is generic; thus the USPTO's evidentiary burden has been met. *See In re Hotels.com LP*, 573 F.3d 1300, 1302, 91 USPQ2d 1532, 1533-34 (Fed. Cir. 2009); *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 1571, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987); TMEP §1209.01(c)(i).

#### REFUSAL IN THE ALTERNATIVE – APPLIED-FOR MARK IS MERELY DESCRIPTIVE

In the alternative, if the applied-for mark is ultimately determined not to be generic by an appellate tribunal, then the refusal of registration based on the applied-for mark being merely descriptive of applicant's services is maintained and continued for the reasons specified in the previous Office action. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); see TMEP §§1209.01(b), 1209.03 et seq.

In addition, applicant's claim of acquired distinctiveness in the response is a concession that the mark sought to be registered is merely descriptive of applicant's services. *In re Leatherman Tool Grp., Inc.*, 32 USPQ2d 1443, 1444 (TTAB 1994); *see Yamaha Int'l Corp. v. Hoshino Gakki Co.*, 840 F.2d 1572, 1577, 6 USPQ2d 1001, 1005 (Fed. Cir. 1988).

#### APPLICANT'S EVIDENCE OF ACQUIRED DISTINCTIVENESS IS INSUFFICIENT

With respect to applicant's claim of acquired distinctiveness, the following evidence was provided in support of such claim: initially a claim based on five years use in commerce, and in the response dated April 8, 2014, evidence of an income tax statement. *See* 37 C.F.R. §2.41.

If the applied-for mark is ultimately determined to be merely descriptive and not generic, the Section 2(f) evidence is insufficient to show acquired distinctiveness because the applied-for mark is highly descriptive of applicant's online retail store services .

The amount and character of evidence needed to establish acquired distinctiveness depends on the facts of each case and particularly on the nature of the mark sought to be registered. *Bd. of Trs. v. Pitts, Jr.*, 107 USPQ2d 2001, 2016 (TTAB 2013) (citing *Roux Labs., Inc. v. Clairol Inc.*, 427 F.2d 823, 829, 166 USPQ 34, 39 (C.C.P.A. 1970)); *In re Chevron Intellectual Prop. Grp. LLC*, 96 USPQ2d 2026, 2030 (TTAB 2010); *see* TMEP §1212.05(a). The more descriptive a term is, the greater applicant's evidentiary burden to establish acquired distinctiveness becomes. *See, e.g., In re Bongrain Int'l (Am.) Corp.*, 894 F.2d at 1317 n.4, 13 USPQ2d at 1728 n.4 (quoting *Yamaha Int'l Corp. v. Hoshino Gakki Co.*, 840 F.2d at 1581, 6 USPQ2d at 1008); *Alcatraz Media, Inc. v. Chesapeake Marine Tours Inc.*, 107 USPQ2d 1750, 1767 (TTAB 2013).

The following factors are generally considered when determining whether a proposed mark has acquired distinctiveness based on extrinsic evidence: (1) length and exclusivity of use of the mark in the United States by applicant; (2) the type, expense, and amount of advertising of the mark in the United States; and (3) applicant's efforts in the United States to associate the mark with the source of the goods and/or services, such as unsolicited media coverage and consumer studies. *See In re Steelbuilding.com*, 415 F.3d 1293, 1300, 75 USPQ2d 1420, 1424 (Fed. Cir. 2005); *Bd. of Trs. v. Pitts, Jr.*, 107 USPQ2d 2001, 2016 (TTAB 2013). A showing of acquired distinctiveness need not consider all of these factors, and no single factor is determinative. *In re Steelbuilding.com*, 415 F.3d at 1300, 75 USPQ2d at 1424; *see* TMEP §\$1212.06 *et seq.* 

Evidence of acquired distinctiveness may include specific dollar sales under the mark, advertising figures, samples of advertising, consumer or dealer statements of recognition of the mark as a source identifier, affidavits, and any other evidence that establishes the distinctiveness of the mark as an indicator of source. See 37 C.F.R. §2.41(a); In re Ideal Indus., Inc., 508 F.2d 1336, 1339-40, 184 USPQ 487, 489-90 (C.C.P.A. 1975); In re Instant Transactions Corp. of Am., 201 USPQ 957, 958-59 (TTAB 1979); TMEP §§1212.06 et seq.

The burden of proving that a mark has acquired distinctiveness is on the applicant. *Yamaha Int'l Corp. v. Yoshino Gakki Co.*, 840 F.2d 1572, 6 USPQ2d 1001, 1004 (Fed. Cir. 1988); *In re Meyer & Wenthe, Inc.*, 267 F.2d 945, 122 USPQ 372 (C.C.P.A. 1959); TMEP §1212.01. An applicant must establish that the purchasing public has come to view the proposed mark as an indicator of origin.

Allegations of sales and advertising expenditures do not per se establish that a term has acquired

significance as a mark. An applicant must also provide the actual advertising material so that the examining attorney can determine how the term is used, the commercial impression created by such use, and the significance the term would have to prospective purchasers. TMEP §1212.06(b); *see In re Boston Beer Co.*, 198 F.3d 1370, 53 USPQ2d 1056 (Fed. Cir. 1999); *In re Packaging Specialists, Inc.*, 221 USPQ 917, 920 (TTAB 1984).

The ultimate test in determining acquisition of distinctiveness under Trademark Act Section 2(f) is not applicant's efforts, but applicant's success in educating the public to associate the claimed mark with a single source. TMEP §1212.06(b); see In re Packaging Specialists, 221 USPQ at 920; In re Redken Labs., Inc., 170 USPQ 526 (TTAB 1971).

For the foregoing reasons and reasons stated in prior Office actions, the evidence of five years use and the income tax statement is insufficient to establish acquired distinctiveness under Section 2(f).

#### **Proper Response to Final Action**

Applicant must respond within six months of the date of issuance of this final Office action or the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond by providing one or both of the following:

- (1) A response that fully satisfies all outstanding requirements and/or resolves all outstanding refusals.
- (2) An appeal to the Trademark Trial and Appeal Board, with the appeal fee of \$100 per class.

37 C.F.R. §2.64(a); TMEP §714.04; see 37 C.F.R. §2.6(a)(18); TBMP ch. 1200.

In certain rare circumstances, an applicant may respond by filing a petition to the Director pursuant to 37 C.F.R. §2.63(b)(2) to review procedural issues. 37 C.F.R. §2.64(a); TMEP §714.04; *see* 37 C.F.R. §2.146(b); TBMP §1201.05; TMEP §1704 (explaining petitionable matters). The petition fee is \$100. 37 C.F.R. §2.6(a)(15).

#### **Assistance**

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

/AKhan/ Asmat Khan Law Office 114 (571)-272-9453 asmat.khan@uspto.gov TO RESPOND TO THIS LETTER: Go to <a href="http://www.uspto.gov/trademarks/teas/response\_forms.jsp">http://www.uspto.gov/trademarks/teas/response\_forms.jsp</a>. Please wait 48-72 hours from the issue/mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For technical assistance with online forms, e-mail <a href="mailto:TEAS@uspto.gov">TEAS@uspto.gov</a>. For questions about the Office action itself, please contact the assigned trademark examining attorney. E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.

All informal e-mail communications relevant to this application will be placed in the official application record.

**WHO MUST SIGN THE RESPONSE:** It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

**PERIODICALLY CHECK THE STATUS OF THE APPLICATION:** To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <a href="http://tsdr.uspto.gov/">http://tsdr.uspto.gov/</a>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at <a href="mailto:TrademarkAssistanceCenter@uspto.gov">TrademarkAssistanceCenter@uspto.gov</a> or call 1-800-786-9199. For more information on checking status, see <a href="http://www.uspto.gov/trademarks/process/status/">http://www.uspto.gov/trademarks/process/status/</a>.

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Arts And Crafts

The fort was built by the French in 1755 and named Fort Carillon. The British captured it in 1759 and renamed it Fort Ticonderoga. During the Revolutionary War, Ethan Allen and Benedict Arnold, with a small force (the Green Mountain Boys), took the fort by surprise on May 10, 1775. The Americans held it until 1777, when it was recaptured by the British.

The fort was abandoned after the Revolutionary War but has been restored as a monument. The museum exhibits weapons, paintings, uniforms and other artifacts. In July and August there are fife-and-drum music and cannon-fire demonstrations.

Children under 10 are admitted free; ages 10 to 13, \$3; ages 14 and older, \$5; senior citizens, \$4.50. You can get more information from Fort Ticonderoga, Box 390, Ticonderoga, N.Y. 12883; 518-585-2821.

According to the Ticonderoga Chamber of Commerce, there is only one bed- and-breakfast establishment in the area. Bonnie View Acres, Carfield Road, Ticonderoga, N.Y. 12883, 518-285-6098. For information about motels and inns in the area, you can write to the chamber at Dox 70, Ticonderoga, N.Y. 12893, 518-585-619.

Steve Birnbaum welcomes questions. Although he cannot reply to all of them individually, he will answer those of general interest in this column. Write to Steve Birnbaum, The Philadelphia Inquirer, 60 E. 42d St., New York 10165.

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Page Select a Reporter Open Doc 1 00 of 100 | 4 Term 00 of 2 |

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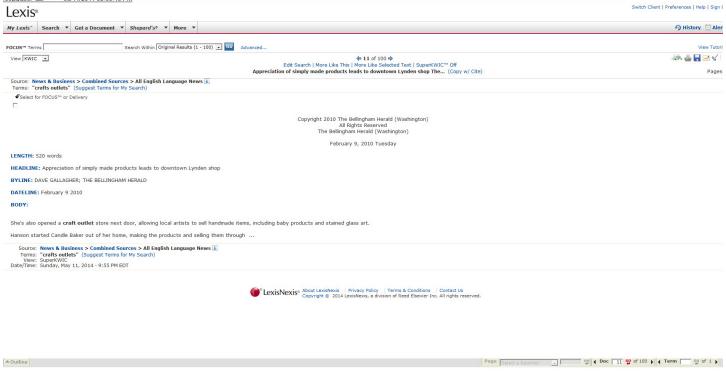
Arts and crafts outlets owner gives managers fat slice of profits and it... (Copy w/ Cite) iii. 🛔 🔡 😅 🎸 Source: News & Business > Combined Sources > All English Language News & Terms: "crafts outlets" (Suggest Terms for My Search) Select for FOCUS™ or Delivery Copyright 1984 U.P.I. United Press Internation September 30, 1984, Sunday, BC cycle SECTION: Financial LENGTH: 567 words **HEADLINE:** Arts and **crafts outlets** owner gives managers fat slice of profits and it really pays off BYLINE: By BRUCE B. BAKKE, UPI Business Writer DATELINE: DALLAS BODY:
Soft-spoken George Griffin, well on the way to building a national empire of arts and crafts outlets, is quick to give the credit for the success of Michaels Stores Inc. to others. The concept is successful, Griffin claims, because of the genius of its creator, Michael Dupey, and because of the talent and experience of its managers. But it was Griffin, the chairman, who ...



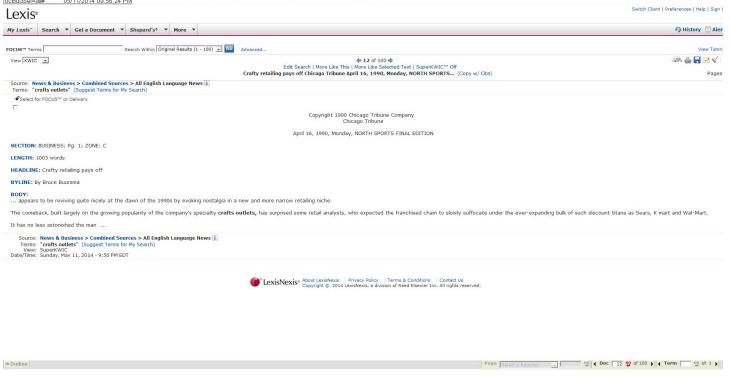
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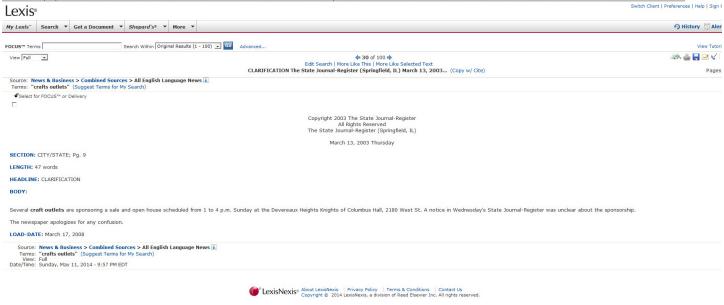


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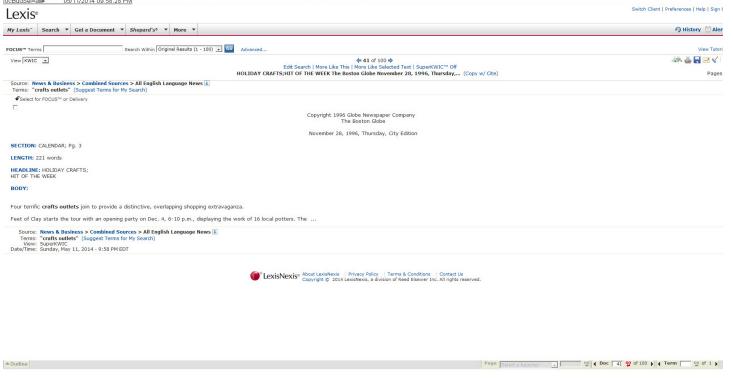
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**To:** Arfeh, Ebab (admin@thetrademarkcompany.com)

**Subject:** U.S. TRADEMARK APPLICATION NO. 85574542 - THE CRAFTS

OUTLET - N/A

**Sent:** 5/13/2014 11:09:50 PM

Sent As: ECOM114@USPTO.GOV

**Attachments:** 

#### UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

# IMPORTANT NOTICE REGARDING YOUR U.S. TRADEMARK APPLICATION

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED ON 5/13/2014 FOR U.S. APPLICATION SERIAL NO. 85574542

Please follow the instructions below:

(1) **TO READ THE LETTER:** Click on this <u>link</u> or go to <u>http://tsdr.uspto.gov</u>, enter the U.S. application serial number, and click on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

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